

CONSTANCIA C. TOLentino, PETITIONER, VS. COURT OF APPEALS AND CONSUELO DAVID, RESPONDENTS.

G.R. No. L-41427. June 10, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue in this petition for review on certiorari is whether or not a woman who has been legally divorced from her husband may be enjoined by the latter's present wife from using the surname of her former husband.

A complaint was filed by petitioner Constancia C. Tolentino with the then Court of First Instance of Quezon City against Consuelo David for the purpose of stopping and enjoining her by injunction from using the surname Tolentino. The complaint also contained a claim for damages which the petitioner, however, waived. An application for a writ of preliminary injunction was filed as well.

On January 13, 1972 respondent Consuelo David filed her answer admitting she has been using and continues to use the surname Tolentino.

The application for the writ was heard with both parties presenting evidence in support of their respective claims.

On January 18, 1972, the trial court issued an order granting the petitioner's action for a writ of preliminary injunction with the actual writ being issued on January 20, 1972. The order granting said writ reads:

"NOW, THEREFORE, it is hereby ordered by the undersigned Judge of the Court of First Instance of Rizal, Branch XVI, Quezon City, that, until further orders, you CONSUELO DAVID, your agents and/or representatives and/or persons acting under your control, direction, instruction and/or supervision, ARE ENJOINED from using, employing and/or applying, in any manner, form or means whatsoever, the surname TOLentino." (p. 17, Original Record On Appeal)

On February 2, 1972, respondent Consuelo filed a motion for leave to file a third party complaint against her former husband. The motion was granted on March 18, 1972. Thereafter, third party defendant Arturo Tolentino filed his answer on April 19, 1972.

After the hearings, the trial court rendered a decision in favor of the petitioner. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered confirming the preliminary injunction and making the same permanent and perpetual — restraining and enjoining defendant, her agents and/ or representatives and/or persons acting under her control, direction, instruction and/or supervision, from using, employing and/or applying, in any manner, form or means whatsoever, the surname 'TOLentino.'

"No pronouncement as to costs, the same having been waived by the plaintiff.

"The third-party complaint is hereby dismissed, without pronouncement as to costs." (p. 93, Original Record on Appeal)

The private respondent appealed the decision to the Court of Appeals raising several issues, among them, the prescription of the plaintiff's cause of action and the absence of a monopolistic proprietary right of the plaintiff over the use of the surname Tolentino.

On June 25, 1975, the Court of Appeals reversed the decision of the trial court.

The dispositive portion of the decision reads as follows:

IN VIEW WHEREOF, sustaining Error 1, this Court is constrained to reverse, as it now reverses, judgment appealed from, complaint is dismissed, with costs." (p. 76, Petitioner's Brief)

The petitioner filed a motion for reconsideration but the same was denied in a resolution dated August 29, 1975.

Hence, this appeal by the petitioner. The uncontroverted facts of the case are:

The petitioner is the present legal wife of Arturo Tolentino, their marriage having been celebrated on April 21, 1945 in Manila. The union produced three children.

Respondent Consuelo David was legally married to Arturo Tolentino on February 8, 1931. Their marriage likewise produced children. The marriage was dissolved and terminated pursuant to the law during the Japanese occupation on September 15, 1943 by a decree of absolute divorce granted by the Court of First Instance of Manila in Divorce Case No. R-619 entitled "Arturo Tolentino v. Consuelo David" on the ground of desertion and abandonment by the wife. The trial court granted the divorce on its finding that Arturo Tolentino was abandoned by Consuelo David for at least three (3) continuous years.

Thereafter, Arturo Tolentino married a certain Pilar Adorable, who however, died soon after their marriage. Tolentino subsequently married Constancia on April 21, 1945.

Consuelo David, on the other hand, continued using the surname Tolentino after the divorce and up to the time of the filing of this complaint.

The third party defendant, in his answer, admitted that the use of the surname Tolentino by the private respondent was with his and his family's (brothers and sisters) consent.

The petition mainly revolves around two issues:

1. Whether or not the petitioner's cause of action has already prescribed, and
2. Whether or not the petitioner can exclude by injunction Consuelo David from using the surname of her former husband from whom she was divorced.

The petitioner's contention that her cause of action is imprescriptible is without merit. In fact, it is contradictory to her own claim. The petitioner insists that the use by respondent Consuelo David of the surname Tolentino is a continuing actionable wrong and states that every use of the surname constitutes a new crime. The contention cannot be countenanced because the use of a surname by a divorced wife for a purpose not criminal in nature is certainly not a crime. The rule on prescription in civil cases such as the case at bar is different. Art. 1150 of the Civil Code provides: "The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought."

All actions, unless an exception is provided, have a prescriptive period. Unless the law makes an action imprescriptible, it is subject to bar by prescription and the period of prescription is five (5) years from the time the right of action accrues when no other period is prescribed by law (Civil Code, Art. 1149). The Civil Code provides for some rights which are not extinguished by prescription but an action as in the case before us is not

among them. Neither is there a special law providing for imprescriptibility.

Moreover, the mere fact that the supposed violation of the petitioner's right may be a continuous one does not change the principle that the moment the breach of right or duty occurs, the right of action accrues and the action from that moment can be legally instituted (*Soriano v. Sternberg*, 41 Phil. 210).

The respondent Court of Appeals, on the other hand, is of the opinion that the period of prescription should be four (4) years, since it appears to be an action based on quasi-delict.— Whatever the period, it cannot be denied that the action has long prescribed whether the cause accrued on April 21, 1945 when the petitioner and Arturo Tolentino got married, or on August 30, 1950, when the present Civil Code took effect, or in 1951 when Constanca Tolentino came to know of the fact that Consuelo David was still using the surname Tolentino. It is the legal possibility of bringing the action which determines the starting point for the computation of the period of prescription (*Español v. Phil, Veterans Administration*, 137 SCRA 314).

The petitioner should have brought legal action immediately against the private respondent after she gained knowledge of the use by the private respondent of the surname of her former husband. As it is, action was brought only in November 23, 1971 with only verbal demands in between and an action to reconstitute the divorce case. The petitioner should have filed her complaint at once when it became evident that the private respondent would not accede to her demands instead of waiting for twenty (20) years.

As aptly stated by the Court of Appeals, "where the plaintiff fails to go to the court within the prescriptive period, he loses his cause, but not because the defendant had acquired ownership by adverse possession over his name but because the plaintiff's cause of action had lapsed thru the statute of limitations." (p. 37, Rollo)

On the principal issue of whether or not a divorced woman may continue using the surname of her former husband, Philippine law is understandably silent. We have no provisions for divorce in our laws and consequently, the use of surnames by a divorced wife is not provided for.

There is no merit in the petitioner's claim that to sustain the private respondent's stand is to contradict Articles 370 and 371 of the Civil Code.

It is significant to note that Senator Tolentino himself in his commentary on Art. 370 of the Civil Code states that "the wife cannot claim an exclusive right to use the husband's surname. She cannot be prevented from using it; but neither can she restrain others from using it." (Tolentino, Civil Code, 1974 ed., p. 681).

Art. 371 is not applicable to the case at bar because Art. 371 speaks of annulment while the case before us refers to absolute divorce where there is a severance of valid marriage ties. The effect of divorce is more akin to the death of the spouse where the deceased woman continues to be referred to as the Mrs. of her husband even if the latter has remarried rather than to annulment since in the latter case, it is as if there had been no marriage at all.

The private respondent has established that to grant the injunction to the petitioner would be an act of serious dislocation to her. She has given proof that she entered into contracts with third persons, acquired properties and entered into other legal relations using the surname Tolentino. The petitioner, on the other hand, has failed to show that she would suffer any legal injury or deprivation of legal rights inasmuch as she can use her husband's surname and be fully protected in case the respondent uses the surname Tolentino for illegal purposes.

There is no usurpation of the petitioner's name and surname in this case so that the mere use of the surname Tolentino by the private respondent cannot be said to have injured the petitioner's rights. "The usurpation of name implies some injury to the interests of the owner of the name. It consists in the possibility of confusion of identity x x x between the owner and the usurper. It exists when a person designates himself by another name, x x x. The

following are the elements of usurpation of a name: 1) there is an actual use of another's name by the defendant; 2) the use is unauthorized; and 3) the use of another's name is to designate personality or identify a person" (Tolentino, *supra*, p. 685). None of these elements exists in the case at bar and neither is there a claim by the petitioner that the private respondent impersonated her. In fact, it is of public knowledge that Constancia Tolentino is the legal wife of Arturo Tolentino so that all invitations for Senator and Mrs. Tolentino are sent to Constancia. Consuelo never represented herself after the divorce as Mrs. Arturo Tolentino but simply as Mrs. Consuelo David-Tolentino. The private respondent has legitimate children who have every right to use the surname Tolentino. She could not possibly be compelled to use the prefix "Miss" or use the name Mrs. David, different from the surnames of her children. The records do not show that she has legally remarried.

In *Silva, et al. v. Peralta* (110 Phil. 57) cited by the petitioner, it was not the mere use of the surname that was enjoined but the defendant's representation that she was the wife of Saturnino Silva. There was, therefore, a usurpation of the wife's status which is absent in the case at bar.

We rule that the use of the surname Tolentino does not impinge on the rights of the petitioner.

Considering the circumstances of this petition, the age of the respondent who may be seriously prejudiced at this stage of her life, having to resort to further legal procedures in reconstituting documents and altering legal transactions where she used the surname Tolentino, and the effects on the private respondent who, while still not remarried, will have to use a surname different from the surnames of her own children, we find it just and equitable to leave things as they are, there being no actual legal injury to the petitioner save a deep hurt to her feelings which is not a basis for injunctive relief.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The decision of the Court of Appeals is AFFIRMED. The writs of preliminary and mandatory injunction issued by the trial court are SET ASIDE.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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